**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.235 OF 2006
WITH
CIVIL APPLICATION NO.302 OF 2006
WITH
CIVIL APPLICATION ST.NO.12844 OF 2006

Mrs.Laxmibai Vailardan Devendra. ..Appellant.

V/s.

Municipal Corpn. of Gr.Bombay. ..Respondent.

Mr.Anil Singh for D.R.Shah for appellant.

Mrs. Geeta Joglekar for respondent.

**CORAM: A.M.KHANWILKAR,J**

**DATE : JUNE 23, 2006.**

**P.C. :**

1. Heard.

2. The limited controversy that was required to be resolved in the present proceedings is whether the suit structure occupied by the appellant falls within the road line. If the same was within the road line, it is obvious that no fault can be found with the proposed action of the Corporation with regard to the suit structure.

3. The grievance of the appellant however, was that it is not within the road line and secondly,

that even if the same was within the road line, authority was obliged to first provide alternate premises to the appellant. By order dated 8th June, 2006 of this court it was directed that both these contentions be considered by superior authority. In deference to the said direction the Deputy Municipal Commissioner (Z-III) decided to examine the matter. The appellant was given notice for personal meeting to be held on 20th June, 2006. The appellant did not turn up for hearing. According to the appellant, intimation was given to the authority on the letter head of her advocate that she was unable to attend the hearing due to personal difficulty. This fact however, is disputed by the Corporation. According to the learned Counsel for the Corporation, the communication did not mention the nature of difficulty to show further indulgence and because of time bound direction given by this court, authority had no option but to proceed to decide the matter. Besides, personal hearing is not provided for by the provisions of the act but that facility was extended to appellant only by way of indulgence in view of the pendency of proceeding before this court and the order passed on 8th June, 2006.

4. There is no reason to doubt the correctness

of the stand taken by the respondent in this behalf. In my opinion, merely because the appellant did not get personal hearing on 20th June, 2006, that alone cannot be the basis to ignore the decision now being reached by the Deputy Municipal Commissioner, which is placed before me. The Deputy Municipal Commissioner has passed detailed order on 21st June, 2006 recording reasons supported by documents on record before him. It is found as of fact that suit structure falls within the road line. Once this finding prevails then it necessarily follows that the proposed action of the Corporation cannot be interfered. The Deputy Municipal Commissioner has found that the structure is situated at the junction of 10th Road, Gurunanak Road, Opp. V.M.Road, near Pushpa Narsi Garde, Vile Parle(W). The Deputy Municipal Commissioner has also adverted to the eleven documents which were submitted on behalf of the appellant and after considering those documents has reached to this conclusion. It is also noticed from the record that the Deputy Municipal Commissioner has also recorded finding that the appellant is not entitled for alternate accommodation as the suit structure was unauthorised and was being used for commercial purpose. The Deputy Municipal Commissioner has also noted that the documents

produced by the appellant does not prove the authenticity of the suit structure. According to the Corporation record, the suit structure was demolished in the year 1995. On this basis, it is held by the Deputy Municipal Commissioner that the appellant is not eligible to alternate accommodation as per the extant policy. There is no reason to doubt this position at this stage of proceeding.

5. Accordingly, both the contentions raised on behalf of the appellant in the present proceeding will have to be rejected. In other words, it is noticed that the suit structure falls within the road line. Secondly, the appellant is not entitled for alternate accommodation as has been found by the Deputy Municipal Commissioner. If it is so, proposed action of demolition of the suit structure under Section 314 of the Act cannot be interdicted. Hence, there is no infirmity in findings reached by the court below in refusing to grant ad-interim relief as prayed for by the appellant during the pendency of the Notice of Motion. That order is upheld. This appeal is therefore, dismissed.

6. It is however, made clear that the issue as to whether the appellant is entitled for alternate

accommodation in view of the demolition of the suit structure will have to be resolved in the main proceedings pending before the trial Court. It will be open to the appellant to carry out necessary amendment in the pending suit, if so advised. If such ground is made out, the trial Court will decide the same on its own merits, in accordance with the law, uninfluenced by any observations made in the impugned order or for that purpose this order, which observations are only prima facie opinion recorded for the purpose of grant or non-grant of interim relief.

7. In view of this order nothing survives in civil applications. Hence, the same are dismissed.